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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,953	09/07/2004	John O. Bosworth Sr.	375-102(US)	6915

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EXAMINER

HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/506,953

Applicant(s)

BOSWORTH SR. ET AL.

Examiner

Khoa D. Huynh

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species 1 in the reply filed on 09/19/06 is acknowledged. The traversal is on the ground(s) that the requirement is improper and should be withdrawn. This is not found persuasive because the entire application contains a number of species that are patentably distinct from one another and including divergent claimed subject matter that separate the species. And such recognized divergent subject matter separating the species is a burden to examination.

The requirement is still deemed proper and is therefore made FINAL.

Furthermore, applicant, the reply, indicates that all claims are readable on the elected species. However, upon further consideration, only claims 1-14 and 16-30 are readable on the elected species. Claims 15 and 31 are not readable on the elected species since the claimed subject matter of claims 15 and 31 is directed to Fig. 24 which is a non-elected invention. Accordingly, claims 15 and 31 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to the non-elected inventions.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the reservoir tube formed of a clear plastic material filled with a porous acetate material as recited in claims 8 and 23, the mounting clip including two upper arms and two lower arms as

recited in claims 7, 11, 12, 22 and 26 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 29-31 have been renumbered 28-30.

4. Claim 21 is objected to because of the following informalities: a claim cannot depend on itself. Appropriate correction is required.

5. Claim 22 is objected to because of the following informalities: a claim cannot depend on itself. Appropriate correction is required. Claim 27 is objected to because of the following informalities: a claim cannot depend on itself. Appropriate correction is required. ***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 11, 12, 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 11, the phrase "can be" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. Claim 12 depends on claim 11 and is likewise indefinite.

Regarding claim 26, the phrase "can be" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. Claim 27 presumably depends on claim 26 and is likewise indefinite.

Claim 26 depends on claim 23 and recites the limitation "said lower arms" in line 2. There is insufficient antecedent basis for this limitation in the claim and therefore, renders the claim indefinite. Claim 27 presumably depends on claim 26 and is likewise indefinite.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-4, 13, 14, 16-19, 28 and 29, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Lunzer (2097496).

Regarding claim 1, the Lunzer reference discloses a liquid container. The liquid container includes a bottom (a), a reservoir tube (e) disposed in the bottom, a capillary (c,d) disposed in contact with the reservoir tube, a middle portion (b,b2) disposed on the bottom, wherein the capillary having an upper portion (d) extending from an opening of the middle portion (Fig. 1).

Regarding claim 2, a top (h) is removably disposed on the middle portion and sealing in the top of the upper portion of the capillary.

Regarding claim 3, the middle portion fits into the bottom and is held therein by means of a horizontal ledge formed in the middle portion that fits into a corresponding horizontal groove defined in the bottom (left column, lines 45-51).

Regarding claim 4, the top includes a flange (about h), wherein the top is removably held on the middle portion via the threaded portion of the bottom so that the flange is grippingly engaging the middle portion.

Regarding claims 13 and 14, the bottom includes two vertical, oppositely disposed walls (f) sloping down from an upper point near a top of the bottom

where they have no width to a lower point near a bottom of the bottom to guide the reservoir tube in place, wherein the reservoir tube is partially held in place by the two vertical, oppositely disposed walls.

Regarding claims 16-19, 28 and 29, the method as claimed would be inherent during the normal use and operation of the Lunzer device.

11. Claims 1-6 and 16-21, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Wada et al. (5087144).

Regarding claim 1, the Wada et al. reference discloses a liquid container (Fig. 6). The liquid container includes a bottom (7), a reservoir tube (3) disposed in the bottom, a capillary (1,2) disposed in contact with the reservoir tube, a middle portion (6) disposed on the bottom, wherein the capillary having an upper portion (the tip of element 2) extending from an opening of the middle portion (Fig. 6).

Regarding claim 2, a top (4,5) is removably disposed on the middle portion and sealing in the top of the upper portion of the capillary.

Regarding claim 3, the middle portion fits into the bottom and is held therein by means of a horizontal ledge (6e) formed in the middle portion that fits into a corresponding horizontal groove defined in the bottom (Fig. 6).

Regarding claim 4, the top includes a flange (about 5b), wherein the top is removably held on the middle portion of the bottom so that the flange is grippingly engaging the middle portion.

Regarding claims 5 and 6, a mounting clip (4a) is fixedly disposed on the top, wherein the mounting clip is capable being used to hold the container on a stethoscope.

Regarding claims 16-21, the method as claimed would be inherent during the normal use and operation of the Wada et al. device.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 5-7 and 20-22, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunzer (as discussed supra) in view of Taylor (D288743).

The Lunzer DIFFERS in that it does not specifically include a mounting clip as claimed. Attention, however, is directed to the Taylor reference which discloses a pouch that is capable of being used to hold a liquid container and be mounted on a stethoscope. The pouch or mounting clip includes two upper arms and two lower arms. These arms are capable of being bent around the tubes of the stethoscope. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Lunzer reference by employing a mounting clip, in view of the teaching of Taylor, in order to conveniently carry the Lunzer liquid container.

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Regarding claims 20-22, the method as claimed would be inherent during the normal use and operation of the modified Lunzer device.

14. Claims 8, 9, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunzer (as discussed supra).

Regarding claim 8, even though the Lunzer reference does not specifically disclose that the reservoir tube formed of a clear plastic filled with a porous acetate material as claimed, it, however, would have been obvious to one of ordinary skill in the art to have modified the Lunzer reference by employing such material for the reservoir tube. Such modification would be considered a mere choice of a preferred material for a reservoir tube on the basis of its suitability for the intended use.

Regarding claim 9, even though the Lunzer reference does not specifically disclose that the capillary formed of a porous high density polyethylene material as claimed, it, however, would have been obvious to one of ordinary skill in the art to have modified the Lunzer reference by employing such material for the capillary. Such modification would be considered a mere choice of a preferred material for a capillary on the basis of its suitability for the intended use.

Regarding claims 23 and 24, the method as claimed would be inherent during the normal use and operation of the modified Lunzer device.

15. Claims 10 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over modified Lunzer (as discussed supra).

Regarding claim 10, even though the modified Lunzer reference does not specifically disclose that the mounting clip formed of neoprene as claimed, it, however, would have been obvious to one of ordinary skill in the art to have modified the modified Lunzer reference by employing such material for the mounting clip. Such modification would be considered a mere choice of a preferred material for a mounting clip on the basis of its suitability for the intended use.

Regarding claim 25, the method as claimed would be inherent during the normal use and operation of the modified Lunzer device.

16. Claims 7 and 22, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Wada et al. (as discussed supra) in view of West (5172683).

The Wada et al. DIFFERS in that it does not specifically include a mounting clip as claimed. Attention, however, is directed to the West reference which discloses a portable mounting clip (Fig. 3) that is capable of being used to hold a liquid container and be mounted on a stethoscope. The mounting clip includes two upper arms (39) and two lower arms (col. 5, lines 43-45). These arms are capable of being bent around the tubes of the stethoscope. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Wada et al. reference by employing a mounting clip, in view of the teaching of West, in order to conveniently carry the Wada et al. liquid container.

Regarding claim 22, the method as claimed would be inherent during the normal use and operation of the modified Wada et al. device.

17. Claims 8, 9, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wada et al. (as discussed supra).

Regarding claim 8, even though the Wada et al. reference does not specifically disclose that the reservoir tube formed of a clear plastic filled with a porous acetate material as claimed, it, however, would have been obvious to one of ordinary skill in the art to have modified the Wada et al. reference by employing such material for the reservoir tube. Such modification would be considered a mere choice of a preferred material for a reservoir tube on the basis of its suitability for the intended use.

Regarding claim 9, even though the Wada et al. reference does not specifically disclose that the capillary formed of a porous high density polyethylene material as claimed, it, however, would have been obvious to one of ordinary skill in the art to have modified the Wada et al. reference by employing such material for the capillary. Such modification would be considered a mere choice of a preferred material for a capillary on the basis of its suitability for the intended use.

Regarding claims 23 and 24, the method as claimed would be inherent during the normal use and operation of the modified Wada et al. device.

18. Claims 10 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over modified Wada et al. (as discussed supra).

Regarding claim 10, even though the modified Wada et al. reference does not specifically disclose that the mounting clip formed of neoprene as claimed, it, however, would have been obvious to one of ordinary skill in the art to have modified the modified Wada et al. reference by employing such material for the mounting clip. Such modification would be considered a mere choice of a preferred material for a mounting clip on the basis of its suitability for the intended use.

Regarding claim 25, the method as claimed would be inherent during the normal use and operation of the modified Wada et al. device.

Allowable Subject Matter

19. Claims 11, 12, 26 (provided that it depends on claim 22) and 27 (provided that it depends on claim 26) would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

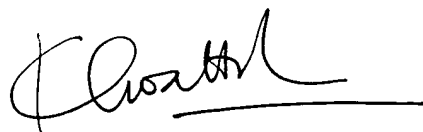
20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', with a horizontal line underneath.

Khoa D. Huynh
Primary Examiner
Art Unit 3751

HK
11/22/06